

REMARKS

This Application has been carefully reviewed in light of the Office Action. Applicants appreciate the Examiner's consideration of the Application. In order to advance prosecution of this Application, Applicants have responded to each notation by the Examiner. Applicants have amended Claims 1, 6, 11, 16, 18, 20, 22, 24, 26, 28, 33, 38, 43, and 44. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under Sections 102 and 103

The Examiner rejects Claims 1-4, 6-9, 11-14, and 16-44 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Pub. No. 2005/0053068 filed by Toth et al. ("*Toth*"). The Examiner rejects Claims 5, 10, and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Toth* in view of International Publication No. WO 03/039024 filed by Rodriguez Gil et al. ("*Rodriguez Gil*"). Applicants respectfully traverse these rejections for the reasons discussed below.

Applicants respectfully submit that *Toth* fails to disclose, or even teach or suggest, the elements specifically recited in Applicants' claims. For example, *Toth* fails to disclose, teach, or suggest the following elements recited in amended independent Claim 1:

directing an enabler mobile to facilitate delivery of the multicast content to the user device using the bearer path, the enabler mobile located in the cell for which the enabler mobile enables delivery, the enabler mobile distinct from a base station, the enabler mobile further distinct from a base station controller.

The Examiner relies on a radio network controller (RNC) of Fig. 1 of *Toth* to teach an enabler mobile of a prior version of Claim 1. (Office Action, Page 3.) Specifically, the Examiner states:

... (Fig. 1, RNC (not shown) of RAN1 facilitates the delivery of multicast content to the user device using the bearer path. As known in the art, Radio Access Network (RAN) comprises radio network controller (RNC) and one or more base stations (BS). Herein, RNC is the enabler mobile), the enabler mobile located in the cell for which the enabler mobile enables delivery (Fig. 1, RNC of RAN1 and BS of RAN1, which is RAN, located in the same cell).

(Office Action, Page 3.)

Whether or not this is correct, *Toth* fails to disclose the enabler mobile of amended independent Claim 1. First, neither Fig. 1 nor the text of *Toth* disclose, teach, or suggest an RNC that operates as an enabler mode.

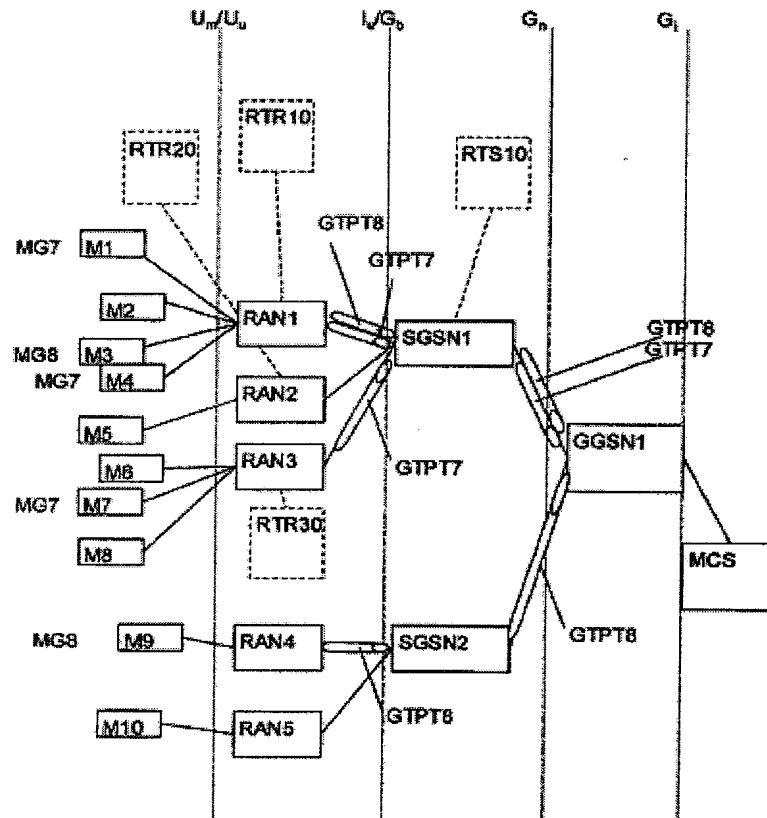


Fig. 1

Toth states that RAN1 is a radio access *node*, or a *base station*:

In FIG. 1, an exemplary diagram relating to a GPRS network has been shown whereby the multicasting according to a first embodiment of the invention has been shown. In the given example a number of mobile stations M1-M10 are wirelessly connected to a number of *base stations, also denoted radio access nodes (RAN1-RAN5)*.

(*Toth*, Page 2, Para. [0050] (emphasis added).) That is, RAN1 is a radio access node, or a base station, but *not* a Radio Access Network that includes an RNC and base stations.

To the extent the Examiner relies on information “known in the art,” Applicants further request that the Examiner produce a reference in support of his position pursuant to MPEP § 2144.03. “It is never appropriate to rely solely on ‘common knowledge’ in the art

without evidentiary support in the record, as the principal evidence upon which a rejection was based.” MPEP § 2144.03.

Second, the RNC of RAN1 as proposed by the Examiner would not be “distinct from a base station controller.” The *Toth* RAN1 is a base station, so the RNC of the RAN1 would be a base station controller, and therefore, is not distinct from a base station controller. As a result, *Toth* fails to disclose, teach, or suggest “directing an enabler mobile to facilitate delivery of the multicast content to the user device using the bearer path, the enabler mobile located in the cell for which the enabler mobile enables delivery, the enabler mobile distinct from a base station, ***the enabler mobile further distinct from a base station controller***” of amended independent Claim 1 (emphasis added).

Consequently, at a minimum, *Toth*, even when combined with *Rodriguez Gil* as proposed by the Examiner, fails to disclose, teach, or suggest the elements of amended independent Claim 1. For at least this reason, independent Claim 1, as amended, and its dependent claims are allowable under 35 U.S.C. §§ 102 and 103. For analogous reasons, independent Claims 6, 11, 16, 18, 20, 22, 24, 26, 28, 33, 38, 43, and 44, as amended, and their respective dependent claims are allowable under 35 U.S.C. §§ 102 and 103. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 1-44.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicants respectfully request full allowance of all the pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Keiko Ichiye, the Attorney for Applicants, at the Examiner's convenience at (214) 953-6494.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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